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Guardian *ad Litem* and Attorney
for Defendant MARK DAVIS, JR.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAI'I

| | | |
|------------------------------------|---|----------------------------------|
| ALLSTATE INS. CO., |) | 1:04-CV-00418-ACK-BMK |
| |) | |
| Plaintiff, |) | CONCISE STATEMENT IN |
| |) | OPPOSITION TO PLAINTIFF'S |
| vs. |) | MOTION FOR SUMMARY |
| |) | JUDGMENT; CERTIFICATE OF |
| MARK DANIEL DAVIS, <i>et al.</i> , |) | SERVICE |
| |) | |
| Defendants. |) | Date: March 28, 2006 |
| |) | Time: 9:30 a.m. |
| _____ |) | Judge: Alan C. Kay |
| 99-196 | | |

**CONCISE STATEMENT IN OPPOSITION TO
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

Defendant MARK DAVIS, JR. submits his concise statement of material facts in opposition to Plaintiff's motion for summary judgment pursuant to LR 56.1. The paragraph numbers below correspond to those of Plaintiff's concise statement.

1. – 12. Uncontroverted.

13. **Objection.** Exhibit 3 is not properly *authenticated*. Fed. R. Evid. 901. *Pioneer Mill Co., Ltd. v. Dow*, 90 Hawai‘i 289, 297, 978 P.2d 727, 735 (1999) (affidavit of counsel does not authenticate exhibits not sworn to or uncertified by preparer or custodian of exhibits); *Nakato v. Macharg*, 89 Hawai‘i 79, 89, 969 P.2d 824, 834 (App. 1998) (attorney’s declaration purporting to authenticate document received from third party not based on personal knowledge). Exhibit 3 also *lacks foundation*. There is no evidence that Defendant Mark Davis, Jr. is the person named as the defendant in Exhibit 3. There is no evidence that the victim of the crimes mentioned in Exhibit 3 was Kau‘ilani Tiarau Lucas-Tadeo. Since there is no foundation establishing relevance, Exhibit 3 is not admissible. Fed. R. Evid. 402.

Dated: Honolulu, Hawai‘i, 9 March 2006.

/s/ Keith K. Hiraoka
KEITH K. HIRAOKA
Guardian *ad Litem* and Attorney for
Defendant MARK DAVIS, JR.